



INVITATION FOR BIDS (IFB)

March 25, 2010

IFB NUMBER: 0325-10-HVAC

IFB SUBJECT: HVAC EQUIPMENT AND INSTALLATION

BIDS SHOULD BE SUBMITTED ONLY TO: Purchasing Office / City Of Falls Church
300 Park Avenue, Rm 300 East
Falls Church, Virginia 22046 / Phone(703) 248-5007

All inquiries should be made in writing and forwarded to Faye Smith, Purchasing Manager, via email to fsmith@fallschurchva.gov with copy to swilson@fallschurchva.gov by no later than five (5) business days prior to the Bid due date.

MANDATORY PRE-BID MEETING: April 7, 2010; 10:00 AM; The Mary Riley Styles Public Library, Conference Room, 120 N. Virginia Ave, Falls Church VA 22046

SEALED BIDS

DUE DATE AND TIME: April 21, 2010 @ 11:00 A.M. prevailing local time (Purchasing Office Clock)
Bids are to be presented for time and date validation **ONLY to the City of Falls Church Purchasing Office.**

All questions must be received in writing by no later five (5) business days before Bid Due Date.

The City of Falls Church reserves the right to reject any or all bids or to accept the bid(s) which, in its judgment, will be for its best interest.

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THIS PAGE MUST BE COMPLETED, SIGNED AND RETURNED WITH BID

In compliance with this Invitation for Bids and to all the conditions imposed herein, the undersigned offers and agrees to furnish the goods and/or services in accordance with the attached signed bid.

Please type or legibly print all information.

LEGAL NAME & ADDRESS OF FIRM:

Company's Legal Name

By: _____
Authorized Representative - Signature in Ink

Name:

Title:

Zip: _____ Date _____

Phone: _____ FAX: _____

Email: _____ VA Business Registration # _____

VA Contractor's License # _____

The City of Falls Church is committed to the letter and spirit of the Americans with Disabilities Act. This document will be made available in alternate format upon request. Call 703 248-5007, (TTY 711).

HVAC Equipment And Installation

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I. GENERAL

- A. ACCESS TO IFB UPDATES: This IFB and any addenda are available on the City of Falls Church's website: www.fallschurchva.gov. The **Purchasing & Procurement** link which contains IFB/Bid information is listed in the Popular Topics Section on the home page. This solicitation and any associated addenda may also be published through eVA, the Commonwealth of Virginia's electronic procurement portal for registered suppliers (<http://eva.virginia.gov>).
- B. Bidders are reminded that changes to the IFB, in the form of addenda, are often issued between the issue date and within three (3) days before the closing of the IFB. **Bidders are solely responsible for checking the Website to insure that they have the most current information regarding the IFB.**
- C. All addenda will become part of any resulting contract and must be signed and submitted with your bid.
- D. Inquiries
 - 1. All questions pertaining to this solicitation must be in writing and shall be directed only to:
 Faye Smith, Purchasing Manager
 The City of Falls Church
 300 Park Ave, Falls Church, VA 22046
fsmith@fallschurchva.gov / Phone: 703.248.5007
 with a copy to swilson@fallschurchva.gov
 - 2. All questions must be received by no later than five (5) business days prior to the IFB closing date.
- E. No bidder shall initiate or otherwise have contact with any City representative or employee, other than the Purchasing Manager or Purchasing Manager's designee concerning or related to this IFB, after the date of this solicitation's release and before award or cancellation of this IFB. Any contact in contradiction to this requirement is prohibited and may cause the disqualification of the bidder from this procurement process.

II. AMERICANS WITH DISABILITIES ACT (ADA)

The City of Falls Church ("City") is fully committed to the letter and spirit of the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all City programs, activities and services. The City's government contractors, subcontractors, offerors, bidders and/or suppliers are subject to this ADA policy. All individuals having any City contractual agreement must make the same commitment. Your acceptance of any contract with the City acknowledges your commitment and compliance with ADA. To request a reasonable accommodation for any type of disability call 703 248-5007, (TTY 711).

III. NONDISCRIMINATION

The City of Falls Church does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against any bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

IV. COMPETITION INTENDED

- A. It is the City's intent that this Invitation for Bids (IFB) permits competition. It shall be the bidder's responsibility to advise the City Purchasing Manager, in writing, if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this IFB to a single source. Such notification must be

received by the Purchasing Manager not later than fifteen (15) days prior to the date set for acceptance of bids.

- B. Nothing herein is intended to exclude any responsible bidder or in any way restrain or restrict competition. All qualified bidders are encouraged to submit bids.
- C. This solicitation is being conducted in accordance with the guidelines of the "Competitive Sealed Bidding" method of contractor selection per the Virginia Public Procurement Act (§2.2-4300 of the Code of Virginia), incorporated herein by reference.

V. ELIGIBILITY

- A. The following minimum requirements must be met at the time the bid is submitted and maintained during the term of any resultant contract:
 - 1. The bidder must be registered to do business in the Commonwealth of Virginia.
 - 2. The bidder must be licensed in accordance with the specific requirements of this solicitation and the Code of Virginia (Licensed Engineer, Contractor's license, etc).

It is the Contractor's sole responsibility to have knowledge of the applicable licenses(s), if any, associated with this solicitation's scope of work.

- B. Any person or firm, or agent of any person or firm, currently suspended or debarred from participation in City procurement, conducting business or submitting bids on contracts by any other local government or agency of the Commonwealth of Virginia is not eligible for contract award under this solicitation.

Any current debarment (Federal, state or local jurisdiction) must be disclosed on the Company Information Form (Section XXII).

VI. RIGHTS OF THE CITY

The City's reserved rights include, but are not limited to, the right to: award a contract by individual items, in the aggregate, or in combination thereof; accept or reject all or any part of bids; withdraw or re-advertise this IFB; and/or waive any informality in bids received whenever any such actions are in the best interest of the City.

VII. PURPOSE

- A. The purpose of this solicitation is to establish a contract for HVAC equipment and installation for the City of Falls Church. The equipment is to be installed at:

The Mary Riley Styles Public Library
120 N. Virginia Ave.
Falls Church VA 22046

- B. This is an Invitation for Bids and is in no way to be misconstrued as a commitment to purchase on the part of the City.

VIII. SCOPE OF WORK

- A. General Requirements:

- 1. This is to be a turnkey equipment purchase with installation and all other services provided by Contractor.
- 2. The Contractor shall furnish and provide all labor, tools, parts, materials, and supervision, to ensure proper delivery and installation of equipment as specified herein. Services shall also include warranty related work. The scope of work for this project consists of installation of a HVAC unit that includes ASHRAE 90.1 compliance and advanced Indoor Air Quality (IAQ) that will support constant volume (CV) and variable air volume (VAV) operations.

3. DELIVERY: Time of proposed delivery shall be stated in number of calendar days. General terms such as "stock", "immediately", and "as soon as possible", may because for rejection. Unless otherwise specified, quote earliest delivery date as it may be considered a factor in making award.
4. DESCRIPTIVE LITERATURE: Bidder shall submit with its bid descriptive literature of equipment, which it proposes to furnish. Should the description furnished in such literature differ from the specifications submitted by the City, and no mention is made to the contrary, it shall be construed to mean that the bidder proposes to furnish equipment in accordance with such description and not in accordance with the City's specifications, and its bid will be evaluated accordingly.

All literature, operating manuals and any other pertinent information offered for equipment proposed, which will remain property of the City.

5. WORKING HOURS: All work must be performed while the Library is closed. The Library's current hours of operation are as follows:

Monday – Thursday: 9:00 am - 9:00 pm
 Friday & Saturday: 9:00 am - 5:00 pm
 Sunday: 1:00 pm - 5:00 pm

6. Insofar as possible, the Contractor, in carrying out his/her work, must employ such methods or means as will not cause interruption of or interference with the work of any other Contractor, or City personnel at the site.
7. The City shall not be responsible for truck fees, service fees, disposal fees, environmental disposal fee's or any other related or not related cost associated with the installation or warranty of the equipment provided hereunder.
8. QUALITY: All products, parts, materials, assemblies, etc. shall be new, not refurbished, and free of cosmetic defects. Proposed products shall meet or exceed industry standards for quality and reliability. Product design and construction must be consistent with current best industry or engineering practices.

All services shall be performed in a first class workmanlike manner in accordance with current industry standards.

All products and services shall meet the current applicable state and federal rules and guidelines.

B. Specific Requirements & Provisions

1. Replacement of the existing 30 ton rooftop HVAC unit Model Trane# SFHDC304HUACC5CD1A01, Serial # J9F711437 with a similar or better unit. Brand name or equivalent equipment will be accepted.
2. Installation of a new 30 Ton constant/volume gas/electric rooftop HVAC unit with comparable specification of replaced unit or better.
3. Disconnect, dismantle and remove existing unit from rooftop.
4. Disconnect all ductwork, gas piping, electrical wiring and control wiring.
5. Reconnect all ductwork, gas piping, electrical and control wiring accordingly.
6. Seal ductwork and unit wherever needed.
7. Evacuate and reclaim refrigerant pursuant to EPA regulations, and/or other federal, state or local laws, standards and guidelines.

8. After refrigerant evacuation and removal of any other liquids, the contractor shall transport and deposit the scrap metal in the scrap metal container at the City's Property Yard, 7100 Gordon Road, Falls Church, VA 22046
9. Clean the area and dispose of all trash, debris and/or non-recyclable material in authorized containers/locations.
10. Work is limited to mechanical and electrical trades except as required to install the mechanical and electrical systems and components.
11. Complete all other necessary work associated with the installation and removal of the equipment. Language that has been excluded or otherwise unintentionally left out, may not be deemed causal for unfinished or unsatisfactory work.
12. HVAC Unit details include but are not limited to:
 - DX cooling with Natural Gas Heat
 - R-22
 - 2 Stage High Gas Capacity
 - 50% Power Exhaust Fan
 - 0-100% Economizer
 - 2.00' Spring Vibration Isolators
 - Throwaway filters
 - 15 Hp Supply Motor
 - Standard Ambient Control
 - Transition Curb

C. Delivery Notification

The City shall be notified at least five (5) business days prior to proposed delivery and installation of equipment so that City personnel may be made available as may needed.

D. Final Inspection:

At the conclusion of the work, the contractor shall demonstrate to the authorized City representative that the equipment is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance of the work.

E. Defective Equipment:

Defective equipment and/or components shall remain the property of the contractor until such time as the defect(s) have been corrected/replaced to the complete satisfaction of the City. All materials not accepted by the City shall be removed by the contractor at no cost to the City.

If the equipment fails to operate a period of ninety (90) successive days without failures, the City may require the Contractor to replace the equipment with new equivalent or better equipment at no cost to the City or the City may terminate the agreement for cause.

F. Warranty

1. The warranty shall cover all service related call's (equipment failures all types) 24 hours a day, 7 days a week during the warranty period specified on the Price Summary.

2. The warranty shall cover all materials, parts, labor, liquids, oils, gases, electrical parts, electronic parts, compressors, condenser coils, fans, relays, etc. required to maintain the equipment in continuous operating condition.

IX. MANDATORY PRE-BID CONFERENCE / SITE VISIT

- A. A **Mandatory** Pre-bid Conference and Site visit is scheduled for 10:00 AM on April 7, 2010, The Mary Riley Styles Public Library, Conference Room, 120 N. Virginia Ave., Falls Church, VA 22046. The site will be available for inspection following the pre-bid conference.
- B. Each bidder shall acquaint themselves thoroughly as to the character and nature of the work to be done. Each bidder furthermore shall make a careful examination of the site of the work and inform themselves fully as to any difficulties to be encountered in performance of the work, the facilities for delivering, storing and placing materials and equipment and other conditions relating to construction and labor.
- C. No plea of ignorance of conditions that exist or may hereafter exist on the site of the work, or difficulties that may be encountered in the execution of the work, as a result of failure to make necessary investigations and examinations, will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every detail all the requirements of the contract documents and to complete the work for the consideration set forth therein, or as a basis for any claim whatsoever.

X. CONTRACT PERIOD AND RENEWAL OPTIONS

- A. If a contract is awarded, it shall cover the period from date of award through completion of work - target contract period not to exceed ninety (90) days.
- B. Non-Appropriation of Funds - All funds for payments by the City for goods/services under contract are subject to the availability of general or specific annual appropriation for this purpose. In the event of non-appropriation of funds for the goods or services provided under contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the City will terminate the contract, without termination charge to the City, on June 30th of the then current fiscal year or when the appropriation made for the then current year for the services covered by the contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under the contract beyond the date of termination. Contractor will be reimbursed for the reasonable value of any actual, documented, nonrecurring costs incurred but not amortized in the price of the supplies or goods delivered under the contract. No amount shall be allowed for anticipated profit on unperformed services.

XI. PRICES AND PRICE ADJUSTMENTS

- A. Contract unit prices will remain firm and fixed through completion of project and any warranty period.
- B. No restocking fees will be charged for product returns under the terms of the contract, if applicable.

XII. PROJECTED REQUIREMENTS/ESTIMATED QUANTITIES

Unless otherwise specified, any quantities detailed in this solicitation are estimates only, and are given for the information of bidders and for the purpose of bid evaluation. They do not indicate the actual quantity of services that will be ordered or may be required to meet the specifications or requirements in the Scope of Work since the actual volume will depend upon requirements that develop during the contract period.

XIII. LICENSES/VA CONTRACTORS

- A. The attention of each bidder is directed to VA Code Sections 54.1-1100 et seq. which requires certain licenses for contractors, tradesmen and others. Each Bidder is required to determine which license, if any, it is required to have under such sections to perform the work specified in this IFB.
- B. If a contract is for seventy thousand dollars (\$70,000) or more, or if the total value of all construction, removal, repair or improvements undertaken by the bidder within any twelve-month period is five hundred thousand dollars (\$500,000) or more, the bidder is required under Title 54, Chapter 11, Code of Virginia (1950), as amended, to show evidence of being licensed as a "Class A Contractor". (Non Virginia licenses are not acceptable.) If a contract is seventy five hundred (\$7,500) dollars or more but less than seventy thousand dollars (\$70,000), the bidder is required to show evidence of being licensed as a "Class B Contractor". If a contract is one thousand dollars (\$1,000) or more but less than seventy five hundred dollars (\$7,500), the bidder is required to show evidence of being licensed as a "Class C Contractor".
- C. Bidders shall note the applicable VA License Number on the Bid cover sheet and include a COPY of the applicable license with their bid whichever of the above notations is appropriate.
- D. If no license is required, Bidder shall so state on the Company Information Appendix.

XIV. BID PREPARATION

- A. The IFB cover page must be signed and completed as required by an authorized representative of the bidder and returned with the Bid. The Bidder's signature on the IFB cover page and Price Schedule certifies that:
 - 1. the bidder acknowledges they have read this solicitation, understand it, satisfied itself from its own investigation of the conditions to be met, fully understands bidder's obligation, agree to be bound by its terms and conditions and will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information. The failure or omission of any bidder to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with conditions existing at the site, if applicable, shall in no way relieve any bidder from any obligations with respect to its bid or to any resultant contract.
 - 2. the bidder it has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, delivery, progress, or performance of the contract work.
 - 3. in the preparation and submission of this bid, said bidder did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1 et seq.) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.
 - 4. the firm submitting the bid is licensed and registered to do business in the Commonwealth of Virginia and has the current Contractor's licenses as may be required under this solicitation.
 - 5. that if awarded the contract, the Contractor shall have insurance coverages as specified in section entitled "Standard Provisions", sub-section entitled "Insurance" at the time the work commences and shall submit proof of such insurance to the City as stipulated in that section.

- B. A bid may be modified or withdrawn by the Bidder anytime prior to the time and date set for the receipt of Bids. The Bidder shall notify the Purchasing Office in writing of its intentions.
1. If a change in the bid is requested, the modification must be so worded by the Bidder as to not reveal the original amount of the Bid.
 2. Modified and withdrawn bids may be resubmitted to the Purchasing Office up to the time and date set for the receipt of bids.
 3. Except as otherwise provided herein, no bid can be withdrawn after the time set for the receipt of Bids and for ninety (90) days thereafter.

XV. BID SUBMISSION REQUIREMENTS

- A. Each bidder must use the attached Price Schedules to submit their bids. All bidders must return:
1. Signed Cover Sheet; One (1) copy
 2. Signed Price Schedules- Section XXI; Two (2) copies
 3. Descriptive literature of equipment, which it proposes to furnish. Bidder shall note if such description furnished in such literature differs from the specifications submitted by the City. If no mention is made to the contrary, it shall be construed to mean that the bidder proposes to furnish equipment or supplies in accordance with such description and not in accordance with the City's specifications, and its bid will be evaluated accordingly. One (1) Copy/Set.
 4. Company Information/References – Section XII /; One (1) copy
 5. Cooperative Procurement Authorization – Section XIII; One (1) copy
 6. Signed Addendums, if any ;One (1) copy each

All other pages should be retained in bidders file.

- B. Authority to Bind Firm in Contract - Person signing bid should show TITLE or AUTHORITY TO BIND HIS FIRM IN A CONTRACT. Person signing bid must do so manually otherwise bid may be disqualified.
- C. Bids shall be placed in a sealed, opaque envelope, clearly marked in the lower left-hand corner with the IFB number and title, and received by March. Bids are to be submitted by mail, courier or delivered in person ONLY to:
- Attn: Purchasing Manager
City Of Falls Church
300 Park Avenue, Rm 300 E, 3rd Floor, East Wing
Falls Church, Virginia 22046; Telephone (703) 248-5007
- D. The City Purchasing Office is open for the receipt of bids from 8:30 AM until 4:30 PM, Monday through Friday (excluding City holidays). The City is not responsible for deliveries attempted outside of these time periods or misdirected to other offices.
- E. **Any bid received after the date and time due for IFB response, whether by mail or otherwise, will not be accepted or considered.** The time of receipt shall be determined by the time the bid is signed in at the Purchasing Office using the Purchasing Office clock as the official time. Bidders are solely responsible for ensuring that their bid is stamped by Purchasing Office personnel by the deadline indicated.
- F. If the City declares administrative or liberal leave, scheduled receipt of bids will be extended to the next business day after which administrative or liberal leave has been canceled.

- G. Oral bids or bids delivered by electronic means such as facsimile and e-mail are not allowed and bids so delivered will not be considered.
- H. All questions regarding this solicitation must be in writing and received by no later than five (5) business days prior to the IFB closing date. No inquiries, if received by the Purchasing Manager within five (5) days of the date set for the opening of bids, will be given any consideration. Any material interpretation of a specification, as determined by the Purchasing Manager, will be expressed in the form of an addendum which will be posted on the City's website (www.fallschurchva.gov) no later than three (3) days before the date set for receipt of bids. Oral answers will not be authoritative.
- I. All erasures, interpolations, and other changes in the bid shall be signed or initialed by the bidder. Carelessness in quoting business terms (i.e. prices), or in preparation of the bid will not relieve the bidder. When an error is made in extending total prices, the unit price will govern. Bidders are cautioned to recheck their bids for possible error. Errors discovered after negotiation cannot be corrected, and the bidder will be required to perform if its bid is accepted.
- J. Trade secrets or proprietary information submitted by a bidder in response to this Invitation for bids shall not be subject to public disclosure under the Virginia Freedom of Information Act.

However, the **bidder must invoke the protection of this section prior to or upon submission of data or materials, and must identify the specific data or other materials to be protected and state, in writing, the reasons why protection is necessary** (Section 2.2-4342F of the Code of Virginia).

Classification of an entire bid document and/or prices (line item or totals) as proprietary or trade secret is NOT ACCEPTABLE and may result in REJECTION of the bid.

- K. The bidder agrees that bids will remain firm for a period of ninety (90) calendar days after the date specified for receipt of the bid.
- L. The City has the indisputable right to cancel the IFB and/or stop the IFB without giving any justification and/or accept or reject any bid, or part of any bid.
- M. Conditional bids are subject to rejection in whole or in part.
- N. Under no circumstances shall any bidder, whose bid has not been awarded, be entitled to any claim for compensation under this solicitation.
- O. The City accepts no responsibility for any expense incurred by the bidder in the preparation and presentation of a bid, such expenses to be borne exclusively by the bidder.

XVI. BID OPENING

- A. All bids received in response Invitation for Bids (IFB) by the due date and time will be opened and read publicly on April 21, 2010, shortly after 11:00 AM, in the Administrative Conference Room, 3rd Floor East, 300 Park Ave., Falls Church, VA 22046.
- B. The bid tabulation will be posted on the City's website: www.fallschurchva.gov.; "Purchasing & Procurement" link.

XVII. BID EVALUATION/CONTRACT AWARD

- A. All items listed in this solicitation will be awarded on the basis of a firm fixed price.
- B. Award will be made to the lowest responsive and responsible bidder complying with all provisions of the IFB provided the bid price is reasonable and it is in the best interest of the City to accept it.

- C. To determine the lowest responsive and responsible Bidder with respect to this Bid, the following factors, among such others as will protect and preserve the interest of the City may be considered:
1. Total extended Bid price as set forth on the Bid Form.
 2. The specified terms, discounts, extended warranty etc., if any, of the Bid.
 3. The ability, capacity and skill of the Bidder to perform the contract and/or provide the services and/or items required.
 4. Whether the Bidder can perform the Contract and/or perform the services and/or provide the items promptly, or within the time specified, without delay or interference.
 5. The character, integrity, reputation, judgment, experience and efficiency of the Bidder.
 6. The quality of and record of performance on previous contracts or services into which the bidder may have entered into with the City or other public bodies or corporations.
 7. The previous and existing compliance by the Bidder with laws and ordinances relating to other contracts, purchase orders, items and/or services provided by Bidder in other matters.
 8. The City expressly reserves the right to reject the bid of such bidder, if such record discloses that said bidder, in the opinion of the City, has not properly performed such contracts or has habitually and without just cause neglected the payment of bills, or has otherwise disregarded his obligations to subcontractors, suppliers or employees.
 9. The sufficiency of the financial resources and ability of the Bidder to perform the Contract and/or provide the services and/or items requested in the IFB.
- D. The City reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the City. The City also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.
- E. Negotiations With Lowest Responsive And Responsible Bidder - Unless all bids are canceled or rejected, the City reserves the right granted by Section §2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible Bidder to obtain a contract price within the funds available to the City whenever such low bid exceeds the City's available funds.
- For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds, which were budgeted by the City for the contract prior to the issuance of the written Invitation for Bids. The City shall initiate such negotiations by written notice to the lowest responsive, responsible Bidder that its bid exceeds the available funds and the City wishes to negotiate a lower contract price. The times, places and manner of negotiating shall be agreed to by the City and the lowest responsive, responsible Bidder. Negotiations with such Bidder may include discussions and modifications of the scope of work, specifications, quantity, quality, or other cost saving mechanisms. Any such negotiated contract shall be subject to final approval of the City, at the sole discretion of the City.
- F. The successful Bidder, within a period of ten (10) business days from the date of the City's acceptance and approval of their bid, shall be expected to sign the contract and to submit the Certificate of Insurance as required in the relevant article of the contract. Failure to do so may cause the bid to be considered withdrawn.
- G. Notice Of Acceptance / Contract Documents: A written award notice (or Acceptance Agreement, contract, or Purchase order) mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract.

The following documents which are included in the solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

1. This solicitation as a whole including but not limited to: Scope of Work / Specifications / Requirements / Attachments / Standard Provisions / General Conditions and Instructions to Bidders, etc.
 2. Price Schedule / Bidder's Company Information.
 3. Any Addenda/Amendments/Memoranda of Negotiations.
 4. City Solicitation Forms and other documents which may be incorporated by reference, if applicable.
- H. The Notice of Award or Notice of Intent to Award will be posted on the City's website: www.fallschurchva.gov; the "Purchasing & Procurement" link.

XVIII. COOPERATIVE PROCUREMENT

- A. This solicitation and the procurement is being conducted on behalf of the City and other public bodies, in accordance with § 2.2-4304 (A) of the Code of Virginia. A partial, non-exclusive list of public bodies authorized to purchase from any resultant contract is attached as Attachment XXIII "Cooperative Procurement – Local Public Bodies".
- B. Bidders are advised that the resultant contract(s) may be extended, with the authorization of the Bidder, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms of the resulting contract.
- C. If any other public body decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The City acts only as the "Contracting Agent" for these public bodies.
- D. Other public bodies desiring to use this contract must make their own legal determination as to whether the use of this contract is consistent with their laws, regulations, and other policies.
- E. It is the responsibility of the contractor to notify the jurisdictions and political subdivision of the availability of the contract. Each participating jurisdiction and political subdivisions has the option of executing a separate contract with the Contractor. Such contracts may contain general terms and conditions unique to those jurisdictions and political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the contractor, the contractor may withdraw its extension of the award to that public body.

XIX. STANDARD PROVISIONS

- A. Section Headings: The headings of the sections in the "Standard Provisions" and/or "General Conditions and Instructions to Bidders" are inserted for convenience only and are not intended to affect the meaning or interpretation of this solicitation or any resultant contract.
- B. Precedence of Terms: In the event that there is a conflict between any terms and conditions in this section and the General Conditions and Instructions to Bidders, the Standard Provisions shall apply.

1. Mandatory Use Of Forms And Terms And Conditions

Failure to submit a bid accompanied by the signed and dated Cover Sheet provided shall be a cause for rejection of the bid. Return of the complete document is required. Modification of or additions to any portion of the solicitation may be cause for rejection of the bid; however, the City reserves the right to decide, on a case-by-case basis, in its sole discretion, whether or not such a bid should be considered as non-responsive.

2. Transportation And Packaging:

By submitting their bids, all bidders certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked.

3. Debarment Status

By submitting a bid, the bidder (including any partner, associate, or subcontractor associated with the provision of services under this solicitation) certifies that they are not (1) currently debarred from conducting business or submitting bids on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; (2) an agent of any person or entity that is currently debarred from conducting business or submitting bids on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; or (3) suspended, proposed for debarment, excluded or disqualified under the nonprocurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits. For procurements that are to be funded by Federal monies, the City will confirm a vendor's status via the Excluded Parties List of the Federal Government.

4. Purchase Orders

Contractor shall not start work prior to the receipt of a purchase order. A purchase order may be enclosed with the resulting contract or may be issued shortly thereafter, and will become an integral part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15 or the Code of the Commonwealth of Virginia and assures distribution of the necessary receiving reports. Transactions under \$1,000 do not require a Purchase Order in accordance with the City's Procurement Guidelines which are incorporated herein by reference.

Any purchase order issued by the City which references this solicitation or resultant contract, shall be deemed to be placed under and incorporate the terms and conditions of this solicitation or resultant contract as well as any supplemental terms and conditions agreed to by the parties in writing. However, the City's failure to specifically incorporate, identify, or reference the contract on any purchase order shall in no manner affect the applicability of these terms and conditions.

5. Choice Of Law & Courts

Any contract resulting from this solicitation is made, entered into, and shall be performed in the City of Falls Church, Virginia, unless otherwise specified, and shall be governed in all respects by the applicable laws of the Commonwealth of Virginia any litigation with respect thereto shall be brought in the courts of the Commonwealth. Any dispute arising out of the contract, its interpretations, or its performance shall be litigated only in either the General District Court or in the Circuit Court of the County of Arlington, Virginia.

6. Compliance With Laws

The Contractor shall comply at its own expense with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the Contractor's performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and inspections. The Contractor shall comply with the Code of Virginia and Section 2.2-4300, the Virginia Procurement Act. The Code of Virginia and the Virginia Public Procurement Act are incorporated herein by reference.

7. BPOL License Requirement

All firms doing business in the City of Falls Church must be licensed in accordance with the City's Business, Professional and Occupational Licensing (BPOL) Tax Ordinance. Wholesale and retail merchants without a business location in the City are exempt from this requirement.

Questions regarding the BPOL license and tax should be referred to the Office of the Commissioner of the Revenue, 300 Park Avenue, Suite #104E, Falls Church, Virginia 22046-3301. Phone: (703) 248-5019; Fax: (703) 248-5212.

8. Payment Terms

Payment will be made upon satisfactory and actual services rendered, and/or products received and accepted, and invoices submitted. All such invoices will be paid net thirty (30) days after receipt of an undisputed invoice unless (i) more favorable terms are stated on Contractor's invoice and the City elects to pay on such terms, or (ii) any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The Contractor shall provide complete cooperation during any such investigation.

Payment terms shall appear on vendor's invoice. Any discount period shall be computed from the date of proper receipt of the Contractor's correct invoice. Late payment charges shall not exceed the allowable rate specified by the Commonwealth of Virginia Prompt Payment Act (1%per month)

The City reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

Payment by the City of invoices does not mean or imply that the goods or services have been accepted and does not impair or limit in any way the City's full rights and remedies which shall be and remain as set forth hereof.

9. Invoicing

All invoices to the City shall reference the applicable Purchase Order number and be submitted to the name and address on the Purchase Order unless otherwise directed.

The prices and payments shall be full compensation for the products, services, labor, tools, equipment, transportation and all other incidentals necessary to deliver the products and/or complete the services ordered.

Conflicting pre-printed provisions on the reverse or front of the Contractor's form(s) shall be deemed deleted.

10. Delivery

Time of proposed delivery shall be stated in number of calendar days. General terms such as "stock", "immediately", and "as soon as possible", may be rejected. Unless otherwise specified, quote earliest delivery date as it may be considered a factor in making award.

11. Changes

The City may, at any time, by written order, require changes in the products to be provided or services to be performed by the Contractor. If such changes cause an increase or decrease in the Contractor's cost of, or time required for performance of any services or provision of products under the contract, an equitable adjustment shall be made and the contract shall be modified in writing accordingly.

The Contractor shall not begin work on any alteration requiring a change order until the agreement, setting forth the changes/modifications, has been executed by the City and the Contractor.

If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the City reserves the right to terminate the contract as it applies to the items/services in question and make such arrangements as may be deemed necessary to complete the work.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in

or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by change order or Contract Amendment.

The City may, in writing, omit from the work any item, other than major items, found unnecessary to the project and such omission shall not be a waiver of any condition of the contract nor invalidate any of the provisions thereof. Major items may be omitted by change order. A major item shall be construed to be any item or service, the total cost of which is equal to or greater than ten percent (10%) of the total contract amount computed on the basis of the proposed quantity and the contract unit prices.

No products or services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the City.

The City must approve all work that is beyond the scope of this Contract. Actual projects/tasks will be ordered in writing by the City, unless for an emergency situation, the Contractor may not begin work on projects until such time as a written authorization and approval of the funding for the project is made.

12. Safety

All contractors and subcontractors performing services for the City are required to comply with OSHA standards, all other Federal and State guidelines, and other industry accepted safety rules and regulations.

Precaution shall be exercised at all times for the protection of persons (including employees) and property.

The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

13. Insurance

- a. The Contractor is responsible for its work and for all materials, tools equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage of or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in any way whatsoever with the contracted work.
- b. The Contractor shall, during the continuance of all work under the contract provide the insurance as detailed below:
 - 1) Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
 - 2) Maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Contractor, its subcontractors, and the interest of the City, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse and underground hazards, where required. Completed operations liability endorsement shall continue in force for three years following completion of the contract.
 - 3) Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property

damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.

- 4) Maintain Contractors Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to insure against loss due to liability imposed upon an owner/contractor for acts arising out of the operations of independent contractors/subcontractors or out of an owner's/contractor's supervisory activity.
 - 5) Maintain Environmental Impairment Liability Insurance including sudden and accidental pollution and in transit coverage as well as coverage for storage at site in the limits of \$2,000,000 per occurrence/aggregate where appropriate.
 - 6) Maintain Professional Liability Insurance in the amount of \$1,000,000 per occurrence/aggregate to cover each individual professional staff where appropriate.
 - 7) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy
 - 8) Liability Insurance "Claims Made" basis: If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:
 - (a) Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractors or sub-contractors work under this contract, or
 - (b) Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
 - 9) The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
 - 10) The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein before any work is started. In addition, the Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the City on demand.
 - 11) The Contractor will provide on demand certified copies of all insurance policies related to the contract within ten (10) business days of demand by the City. These certified copies will be sent to the City from the Contractors insurance agent or representative.
- c. No change, cancellation, or non-renewal shall be made in any insurance coverage

without a forty five (45) day advance written notice to the City. The Contractor shall furnish a new certificate prior to any change or cancellation dated. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.

- d. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the contract.
- e. Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- f. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of person directly employed by it.
- g. The City, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that his coverage "is primary to all other coverage the City may possess."
- h. If an "ACCORD" Insurance Certificate form is used by the Contractor's insurance agent, the words, "endeavor to" and "... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.

14. Warranties

Contractor represents and warrants that all products will be new, free from all defects whatsoever in material or workmanship and will conform to, comply, function and perform in accordance with the requirements and specifications, and that Contractor will make all necessary adjustments, repairs and replacements to maintain all goods in such condition during the term of the applicable warranty, in accordance with the terms and conditions hereof. Unless otherwise specified such adjustments, repairs and replacements will be provided promptly at no additional cost and to the satisfaction of the City during the applicable warranty term. Contractor further warrants that each product furnished under the contract will perform such general and specific operations and have such general and specific characteristics as described and claimed for them in any of Contractor's published literature, descriptions and specifications whether or not such literature, descriptions and specifications are included in or referenced by a Purchase Order or this Agreement.

Contractor warrants to the City that services provided hereunder shall be diligently, efficiently and skillfully performed in a manner which meets or exceeds the highest prevailing standards in the industry, and in accordance with applicable specifications.

All warranties shall survive inspection, acceptance and payment.

Contractor's and/or manufacturer's warranty shall cover all parts and factory labor. Any warranty specified by the Contractor shall not act to void longer guarantees given by the manufacturer of the equipment or its components.

15. Default

In case of failure to deliver products, to meet specifications, in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and

administrative costs. This remedy shall be in addition to any other remedies which the City may have.

16. Bonding

The City reserves the right to require a bid or performance bond for contracts for goods or services if provided in the Solicitation. In such case, the successful bidder shall bear the cost and be required to furnish such bid, or performance bond in the amount of contract before award of contract. If no bond can be furnished by the successful bidder, the City reserves the right to award the contract to the next lowest responsible bidder.

A bid bond guarantees that if the contract is awarded to the bidder, the bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five (5%) percent of the amount bid.

A performance bond in the sum of the contract amount is conditioned upon the Contractor's faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

All bonds shall be from a surety company selected by the bidder that is authorized to do business in Virginia,

17. Termination

Subject to the provisions below, the contract may be terminated by the City upon thirty days (30) written Notice to the Contractor; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the contract may be extended upon written approval of the City until said work or services are completed and accepted.

a. Termination for Convenience

In the event that the contract is terminated or cancelled upon request and for the convenience of the City, without the required thirty (30) days advance written notice, then the City shall pay the Contractor a reasonable, equitable adjustment in the contract price for completed performance, but no amount shall be allowed for anticipated profit on unperformed services.

b. Termination for Cause

The City may terminate the contract for cause, default, or negligence on the part of the Contractor at any time. Termination by the City for cause, default or negligence on the part of the Contractor shall be excluded from the foregoing provision (a) hereinabove; termination cost, if any, shall not apply. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause. In the event any Termination for Cause is found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a Termination for Convenience.

c. Termination Due to Unavailability of Funds

All funds for payments by the City for goods/services under contract are subject to the availability of general or specific annual appropriation for this purpose. In the event of non-appropriation of funds for the goods or services provided under contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the City will terminate the contract, without termination charge or other liability to the City, on June 30th of the then current fiscal year or when the appropriation made for the then current year for the services covered by the contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under the contract beyond the date of termination. Contractor will be reimbursed for the

reasonable value of any actual, documented, nonrecurring costs incurred but not amortized in the price of the goods or services delivered under the contract prior to the date of termination. No amount shall be allowed for anticipated profit on unperformed services.

18. Access, Inspection and Acceptance

The City will, at all times, have access to the work being performed under this contract wherever it may be in progress or preparation.

The City reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications. If goods or services do not conform to requirements, in addition to all other rights and remedies City may have, the City may reject the goods or services in full or part. Non-conforming goods may be returned or non-conforming services rejected at the City's option for refund, credit or replacement at Contractor's expense. Goods rejected upon receipt remain the property of Contractor. The City's inspection, or lack of inspection, shall not affect any express or implied warranties, nor shall the City waive any rights to return goods which contain latent defects discovered in the testing of the City's products containing such goods. Nothing in this section affects or limits any of the City's rights or remedies available under the contract.

19. Delays

If delay is foreseen, Contractor shall give thirty (30) days prior written notice to the designate City Project Manager. The City has the right to extend delivery date if reasons appear, in the sole discretion of the City, to be valid. Contractor must keep the City advised at all times of status of order. Except as otherwise provided in the contract, default in promised delivery or failure to meet specifications, authorizes the City to purchase supplies, equipment, or services elsewhere and charge full increase in cost and handling to defaulting Contractor.

20. Correspondence

All communications between the parties relating to material contractual issues shall be through the Purchasing Manager and must be in writing to be deemed binding.

21. Work Site Damages

Any damage to property, whether owned by the City or others, resulting from work performed under this contract, shall be repaired or replaced to the City's satisfaction at the Contractor's expense. Contractor shall immediately notify City of any such damages.

22. Dispute Resolution

Arbitration shall not be applicable but the parties shall negotiate in good faith to resolve any dispute arising under the contract. Disputes by Contractor with respect to the contract which are not otherwise disposed of by mutual agreement shall be submitted in writing and forwarded to the City Purchasing Manager. The Contractor's dispute shall detail all pertinent facts of the dispute and the desired outcome.

Such dispute shall be considered and decided in the first instance by the City's Purchasing Manager, whose decision shall be reduced to writing and forwarded to the Contractor within twenty (20) days of receipt of such written dispute. The decision of the Purchasing Manager shall be final and binding unless within twenty (20) days from the date of such decision, the Contractor forwards a written appeal addressed to the City Manager with copy to the Purchasing Manager. Within twenty (20) days of receipt of such written appeal, the City Manager shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor.

The decision of the City Manager shall be final and binding unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. Pending a final determination of a properly appealed decision of the

Purchasing Manager, the Contractor shall proceed diligently with the performance of the Contract in accordance with that decision.

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

23. Indemnification

The Contractor agrees to indemnify, defend and hold harmless the City of Falls Church, Virginia, its officers, agents, and employees from any claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The Contractor agrees to protect the City from claims involving infringement of patent or copyrights.

Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the City as herein provided.

24. Non-Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the contract, shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

The City's failure at any time to enforce any of the provisions of the contract or any right or remedy available hereunder or at law or equity, or to exercise any option herein provided will in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this agreement. The exercise by the City of any rights, remedies or options provided hereunder or at law or equity shall not preclude or prejudice the exercising thereafter of the same or any other rights, remedies, or options.

25. News Release/Publicity By Contractors

As a matter of policy, the City does not endorse the products or services of a Contractor. News releases or other publicity concerning any resultant contract from this solicitation will not be made by a Contractor without the prior written approval of the City. All proposed news releases will be routed to the Purchasing Manager for review and consideration of approval.

26. Relationship Of Parties

In providing any goods or services under any resulting contract, the Contractor is acting solely as an independent contractor and not as an agent of any other party. Persons furnished by the respective parties shall not be considered employees of the other party for any purpose. Nothing contained in the IFB or any resultant contract is intended to give rise to a partnership or joint venture between the parties.

27. Provisions Required By Law Deemed Inserted

Each and every provision of laws and clauses required by law to be inserted in a contract resulting from this solicitation shall be deemed to be inserted and incorporated by reference. The contract shall be read and enforced as though the required provisions are included and

if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon the application of either party, the contract may be amended to make such Insertion.

28. Emergency Purchases

If the Contractor is unable to provide the required service for any period of time, except as provided in the Section "General Terms and Conditions", paragraph entitled "FORCE MAJEURE", the Contractor is responsible for providing a backup service to the City at no additional cost to the City. The City reserves the right to make arrangements for service, under emergency conditions from other sources, should the Contractor be unable to provide the required service within the required time frame. If this occurs, the City further reserves the right to recover all costs from the Contractor

XX. GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

- A. The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the City, unless otherwise specified. Bidders or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the bidder's own risk and relief cannot be secured on the plea of error.
 - B. Subject to all state and local laws and all rules, regulations and limitations imposed by legislation of the federal government, bids on all solicitations issued by the City will bind bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.
 - C. If there is a conflict between the terms and conditions in this "General Conditions and Instructions to Bidders" and the Standard Provisions and/or conditions in other attachments to this solicitation, the latter shall take precedence.
1. **DEFINITIONS:** The terms defined in this section shall have the meanings set forth below whenever they appear regardless of case (capitalized or not), unless the context in which they are used clearly requires a different meaning or a different definition is described for a particular Section or provision:
 - a. **BID:** The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation (Invitation for Bids).
 - b. **BIDDER:** Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the City and offering to enter into contracts with the City. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.
 - c. **CONTRACTOR:** Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the City.
 - d. **CITY:** City of Falls Church.
 - e. **DAY:** Unless otherwise specified "day" or "days" shall mean calendar days
 - f. **GOODS:** All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.
 - g. **INFORMALITY:** A minor defect or variation of a bid from the exact requirements of the invitation to bid which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
 - h. **INVITATION FOR BIDS (IFB):** A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the City. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

- i. **OPEN MARKET PROCUREMENT:** A method of competitive bidding for the purchase or lease of goods, non-professional services or for the purchase of insurance, construction, or construction management when the estimated cost thereof shall be less than \$50,000.
- j. **PROFESSIONAL SERVICES:** Any type of professional service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a).
- k. **PURCHASING MANAGER:** The Purchasing Manager employed by the City of Falls Church, Virginia.
- l. **RESPONSIBLE BIDDER:** An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required.
- m. **RESPONSIVE BIDDER:** An individual, company, firm, corporation, partnership or other organization having submitted a bid which conforms in all material respects to the Invitation For Bids.
- n. **SERVICES:** Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
- o. **SOLICITATION:** Depending upon the context an IFB or the process of notifying prospective bidders that the City wishes to receive bids on a set of requirements to provide goods or services.
- p. **STATE:** Commonwealth of Virginia.

CONDITIONS OF SOLICITATION RESPONSE

2. **FORMS** - Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, including the Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope. Should the bid prices and/or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.
3. **ERRORS IN BIDS**-When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder.
4. **WITHDRAWAL OF BIDS** - Bids that have been appropriately opened by the City cannot be changed, adjusted, corrected or modified in any way other than complete withdrawal. The City's procedures for withdrawal of bids (whether construction or other than construction) is that set forth in Code of Virginia, §2.2-4330(A)(i), which allows withdrawal of a Bid due to an error such as an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid. Withdrawal must be requested within two (2) days of the Bid opening by delivering to the City original work papers, documents, and materials used in preparation of the Bid. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.
5. **PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE SEALED BIDDING:** No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

6. **ACCEPTANCE OF BIDS - BINDING 90 DAYS** - Unless otherwise specified, all bids submitted shall be binding for ninety (90) calendar days following solicitation opening date, unless extended by mutual consent of all parties.
7. **BID OPENING** - All bids received in response to an Invitation for Bids (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph in this section entitled "Virginia Freedom of Information Act".
8. **CONDITIONAL BIDS** - Conditional bids are subject to rejection by the City in whole or in part.
9. **BIDS FOR ALL OR PART** - Unless otherwise specified in the solicitation, the City reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the City. A bidder may restrict his/her bid to consideration in the aggregate by so stating but shall name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
10. **OMISSIONS & DISCREPANCIES**-Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications. Should a bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Purchasing Manager at least five (5) business days prior to the date set for the opening of bids. If necessary, the Purchasing Manager will send a written addendum for clarification to all bidders no later than three (3) business days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.
11. **BIDDER INTERESTED IN MORE THAN ONE SOLICITATION** - If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
12. **TAX EXEMPTION:** The City is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption registration number 54-6001271 applies. Certificated furnished upon request. The price bid must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the City. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.
13. **CONDITION OF COMMODITIES:** All items bid/proposed shall be new, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in bid invitation. Verbal agreements to the contrary will not be recognized.
14. **PROHIBITION AGAINST UNIFORM PRICING** - In submitting a solicitation response each bidder shall, by virtue of submitting a bid, guarantee that he or she has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.
15. **PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE SEALED BIDDING:** No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

SPECIFICATIONS

16. **BRAND NAME OR EQUIVALENT ITEMS**-Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the City in its sole discretion determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
17. **FORMAL SPECIFICATIONS**-When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

18. **FEDERAL SPECIFICATIONS**-Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).

AWARD

19. **AWARD OR REJECTION OF BIDS:**
 - a. The City shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the City to accept it.
 - b. In determining the responsibility of a bidder, a number of factors, including but not limited to the following factors will be considered. The bidder should:
 - 1) be a regular dealer, supplier, or contractor, or when required in the solicitation an authorized dealer, of the goods or services offered;
 - 2) have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
 - 3) have a satisfactory record of performance;
 - 4) have a satisfactory record of integrity; and,
 - 5) have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or Contract.
 - c. To be considered for an award, a bidder must comply in all material respects with the IFB. Responsiveness relates to compliance with the provisions of the solicitation, including specifications and terms and conditions. Failure to comply with the requirements set forth in the IFB may result in a bid being declared nonresponsive, (e.g., failure to sign a bid, failure to return the required IFB documents, etc.) Such other information as may be secured by the City having a bearing on the decision to award the contract.
 - d. The City also reserves the right to reject the bid of a bidder deemed to be a non-responsive bidder.
 - e. All awards for goods and services over \$100,000 and professional services over \$60,000 are contingent upon City Council approval.
20. **TIE-BIDS** – If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of readvertisement for bids, the City has a right award the contract to the resident City of Falls Church tie bidder whose firm has its principal place of business in the City, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the City may purchase the goods or services in the open market except that the price paid shall not exceed

- the lowest contract bid price submitted for the same goods or services. The decision of the City to make award to one or more such bidders shall be final.
21. **PROMPT PAYMENT DISCOUNT** - In connection with any discount offered, time will be computed from the date of delivery of the services or supplies to the carrier when delivery, inspection and acceptance are at the point of origin; or, from date of delivery, inspection and acceptance at destination; or, from date correct invoice or voucher is received in the office specified by the City, if the latter is later than the date of acceptance. In the event the bidder does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.
 22. **INSPECTION-ACCEPTANCE** - Inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.
 23. **CONTRACT ALTERATIONS** - No alterations in the terms of a contract shall be valid or binding upon the City unless made in writing and signed by the City's authorized representative.
 24. **CONTRACT ASSIGNMENT** - The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the City.

If the Contractor desires to assign his/ her right to payment of the contract, Contractor shall notify the Purchasing Manager immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.
 25. **FUNDING-A** contract shall be deemed binding only to the extent of appropriations available for the purchase of goods and services.

CONTRACT PROVISIONS

26. **ANTI-TRUST:** By entering into a contract, the bidder conveys, sells, assigns, and transfers to the City all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City under said contract. Consistent and continued tie bidding could cause rejection of bids by the City and/or investigation for Anti-Trust violations.
27. **ANTI-DISCRIMINATION:** By submitting their bids all bidders certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:
In every contract over \$10,000.00 the provisions in "a" and "b" below apply:
 - a. During the performance of this contract, the contractor agrees as follows:
 - 1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - b. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

28. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the Code of Virginia (1950), as amended, shall be applicable to all contracts solicited or entered into by the City.

By submitting their bids, all bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

29. **CRIMINAL SANCTIONS:** The provisions referenced in Item 27 supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§§ 18.2-498.1 et seq.), and Articles 2 (§§ 18.2-438 et seq.) and 3 (§§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.
30. **FORCE MAJEURE:** Neither party shall be liable for any delay or failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, acts by the public enemy, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).
31. **USE OF INFORMATION:** Any specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information or data, written, oral, or otherwise (all hereinafter designated "Information") which the City furnished, or shall furnish, to the Contractor under the contract or in contemplation of this agreement, or that Contractor comes in contact with on City premises or under City control shall remain City property. All copies of such information in written, graphic or other tangible form, and all information, ideas, discoveries, improvements, derived from or reflecting such information, shall be returned to City at its request, and in any event within thirty (30) days after the expiration or termination of the contract. Unless such information was previously known to Contractor free of any obligation to keep it confidential, or has been or is subsequently made public by City or a third party without breach of any agreement, it shall be kept strictly confidential and shall be used only in performing services under this Agreement, and may not be used for other purposes except upon such terms as may be agreed upon between Contractor and City in writing. Unless approved in writing by the Purchasing Manager, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Contractor under the final contract.
32. **RECORD RETENTION/AUDITS:** The Contractor shall maintain accurate records of all invoices, amounts billable to and payments made by the City, during the performance of the contract and for a period of three (3) years from the completion of this agreement. Such records shall include, but not be limited to: all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including the Contractor's copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments, and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the City on demand and without advance notice during the Contractor's normal working hours. City personnel or designee may perform in-progress and post-audits of the Contractor's records.
33. **BANKRUPTCY:** If the Contractor should be adjudged bankrupt, or make general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency, then the City without prejudice to any other right or remedy, may terminate the contract and procure such goods or services from other sources. Contractor shall be liable to the City for any additional cost caused by such default. In such cases, the Contractor shall not be entitled to receive any further payment if the expense of finishing the contract requirements,

including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the City.

34. **SUBCONTRACTING:** If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us/>; the Virginia Department of Minority Business Enterprise <http://www.dmbes.state.va.us/>; local chambers of commerce and other business organizations. As part of the contract award, if requested by the City, the prime contractor agrees to provide the names and addresses of each subcontractor that subcontractor's status as defined by the Commonwealth of Virginia as small, minority-owned and/or woman-owned business and the type and dollar value of the subcontracted goods/services provided.

The Contractor may subcontract third party issues performed under the contract, but must submit a written list of those subcontractors, their addresses, personnel who will be performing the work, and a description of the work to be performed to the City prior to the work actually being done. The City must agree to the third party's work and reserves the right to deny the third party access if necessary.

35. **PAYMENTS TO SUBCONTRACTORS:** Within seven (7) days after receipt of amounts paid by the City for work performed by a subcontractor under this Agreement, the Contractor shall either:
- Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or,
 - Notify the City and subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include this provision in each of its subcontracts requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the City.

36. **TIME OF THE ESSENCE:** - Time is of the essence in respect to all provisions of the contract that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this agreement.
37. **PRICE REDUCTION-**If at any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor in addition will within ten (10) days of any general price reduction notify the Purchasing Manager of such reduction in writing.
38. **KEY PERSONNEL** - Any personnel named in the bid details will remain responsible for performance of the described task(s) throughout the period of any contract resulting from the

solicitation. No diversion or replacement may be made without advance written notice to the Purchasing Manager and submission of a resume of the proposed replacement for review and approval by the City.

- 39. **REPORTS** - The Contractor must submit status reports as requested appropriate to the tasks and projects that are developed under contract in a form, format and frequency satisfactory to the City.
- 40. **AUTHORIZED DEALER/DISTRIBUTOR RESPONSIBILITIES** - The Contractor, as the manufacturer or an authorized dealer/distributor of the products specified in the solicitation, hereby transfers all rights, including software rights, licenses and documentation to the City upon product acceptance.
- 41. **OWNERSHIP OF MATERIAL** - Ownership of all data, materials and documentation originated and prepared for the City pursuant to the bid shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act.

SHIPPING/DELIVERY PROVISIONS

- 42. **SHIPPING** - Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Contractor's expense. Delivery shall not be deemed complete until the goods have been actually received by City at its facility.
- 43. **RESPONSIBILITY FOR SUPPLIES TENDERED** - Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the City may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
- 44. **INSPECTIONS** - Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the City will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the City for such materials or supplies as are not in accordance with the specifications.
- 45. **COMPLIANCE** - Delivery must be made as ordered and in accordance with the solicitation or as directed by the City when not in conflict with the bid. The decision of the City as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the City, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the City, there shall be added to the time of completion a time equal to the period of such delay caused by the City. However, the contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Standard or Specific Provisions for the individual solicitation.
- 46. **POINT OF DESTINATION** - All materials shipped to the City must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
- 47. **ADDITIONAL CHARGES** - Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.

48. **METHOD AND CONTAINERS**-Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the City unless otherwise specified by bidder.
49. **REPLACEMENT**-Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the City.
50. **PACKING SLIPS OR DELIVERY TICKETS**-All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:
 - a. The Purchase Order Number,
 - b. The Name of the Article and Stock Number (Supplier's),
 - c. The Quantity Ordered, d. The Quantity Shipped,
 - e. The Quantity Back Ordered, f. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

BIDDER/ REMEDIES

51. **PROTEST OF AWARD OR DECISION TO AWARD:**
Any bidder may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Manager, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first in pursuant to the solicitation only in accordance with the provisions of Sections 2.2-4357, 4358, 4359, 4360, 4363, and 4364 of the Code of Virginia, and only if such is provided for in such Code section.
52. **APPEAL OF DENIAL OF WITHDRAWAL OF BID-**
 - a. A decision denying withdrawal of a bid submitted by a bidder shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
 - b. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.
53. **APPEAL OF DETERMINATION OF NONRESPONSIBILITY-**
 - a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular City contract shall be notified in writing by the Purchasing Manager. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
 - b. If, upon appeal, it is determined that the decision of the City was arbitrary or capricious and the award for the particular City contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the City contract in question. Where the award has been made and performance has begun, the City may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

GENERAL

54. **LEGAL ACTION:** No bidder, potential bidder, or subcontractor shall institute any legal action until all statutory requirements have been met.
55. **QUALIFICATIONS OF BIDDERS:** The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods, and the bidder shall furnish to the City all such information and data

for this purpose as may be requested. The City reserves the right to inspect the bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The City further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder fails to satisfy the City that such bidder is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

56. **DELIVERY/SERVICE FAILURES:** Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the City, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the City, shall constitute authority for the City to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the City, within a reasonable time specified by the City, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the City reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the City.
57. **GUARANTEES & WARRANTIES:** All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the City before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.
58. **GENERAL GUARANTY:** The Contractor agrees to:
 - a. Save the City, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City.
 - b. Protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
 - c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
 - d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, and regulations of the City.
 - e. Protect the City from loss or damage to City owned property while it is in the custody of the Contractor.
59. **SERVICE CONTRACT GUARANTY:** The Contractor agrees to:
 - a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time.
 - b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
 - c. Render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.
 - d. Allow services to be inspected or reviewed by an employee of the City at any reasonable time and place selected by the City. The City shall be under no obligation to compensate the bidder for any services not rendered in strict conformity with the contract.
 - e. Stipulate that the presence of a City inspector shall not lessen the obligation of the bidder for performance in accordance with the contract requirements, or be deemed a defense on the part of the bidder for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Manager.

60. OFFICIALS NOT TO BENEFIT-

- a. Each bidder shall certify, upon signing a bid, that to the best of his or her knowledge no City of Falls Church official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the City Manager, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the bidder has knowledge of benefits as outlined above, this information should be submitted with the bid. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder shall address the disclosure of such facts to the City of Falls Church, 300 Park Avenue, Falls Church, VA 22046. Relevant Invitation For Bid Number should be referenced in the disclosure.

61. REGISTERING OF CORPORATIONS-Any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

62. COVENANT AGAINST CONTINGENT FEES-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the City shall have the right to terminate or suspend this contract without liability to the City or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

63. VIRGINIA FREEDOM OF INFORMATION ACT: All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:

- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- b. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the City decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- c. Trade secrets or proprietary information submitted by a offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the offeror or subcontractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

Nothing contained in this section shall be construed to require the City, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the City.

64. SMALL, WOMAN AND MINORITY-OWNED BUSINESS (SWAM):

- a. The City encourages Small, Woman and Minority-owned business to participate in business opportunities with the City.
- b. Where Federal grants or monies are involved it is the policy of City, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.
- c. Contact the Virginia Department of Minority Business Enterprise for more information regarding certification and certified businesses: <http://www.dmbbe.virginia.gov/>

65. DRUG FREE WORKPLACE-During the performance of a contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

66. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into a written contract with the City, the Contractor certifies that the Contractor does not, and shall not, during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

XXI. PRICE SCHEDULE

Please type or print legibly

COMPANY: _____

<u>DESCRIPTION</u>	<u>FIRM, FIXED PRICE</u>
1 (one) HVAC Unit per Specifications (or better)	\$ _____
Manufacturer Name:	
Model Number:	
Delivery, installation, warranty and all other associated services:	\$ _____
TOTAL PRICE	& _____
Award to be made on a Total Sum Basis	

Term Discount for Prompt Payment: _____% Net _____ days

Equipment Delivery after Receipt of Order (ARO): _____ days
State your earliest firm delivery or performance date. This date may be a factor in making the award.Installation completion after equipment delivery: _____ days
State your earliest firm delivery or performance date. This date may be a factor in making the award.Warranty Period (equipment & services) : _____ months/years
Includes manufacturer & labor warranties**By signing this Bid, Bidder certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in this solicitation.**

COMPANY NAME: _____

AUTHORIZED SIGNATURE / TITLE_____
PRINTED NAME DATE: _____Key contact person for
Contract administration: _____ / Tele: _____

Email address: _____

XXII. COMPANY INFORMATION AND REFERENCES**A. Company Information**

1. Number of Full Time Employees: _____ Number of Part Time Employees: _____
2. Years of Experience in HVAC equipment provision and services: _____
3. Address of local office/shop from which work will be provided: _____
4. Key contact person for Questions and Contract Administration:
 Printed Name _____ Title _____
 Phone # _____ Email Address: _____
5. Are you current debarred from conducting business or submitting bids on contracts by any local government or agency of the Federal government? ____YES ____NO.
 If yes, provide information regarding the debarment and the local or federal government or agency contact information (name, title, telephone number and email address).

B. References

Submit references for contracts/projects similar in scope to this requirement. References should be for current work or projects completed within the last three (3) years. Bidders may not use the City as one of their references. Please Type or print legibly.

1. Firm Name: _____
 Contact Name & Title: _____
 Email Address: _____
 Phone number: _____ Contract/Project Amount: \$ _____
 Scope of Work Performed: _____

2. Firm Name: _____

Contact Name & Title: _____

Email Address: _____

Phone number: _____ Contract/Project Amount: \$_____

Scope of Work Performed: _____

3. Firm Name: _____

Contact Name & Title: _____

Email Address: _____

Phone number: _____ Contract/Project Amount: \$_____

Scope of Work Performed: _____

You may add other references and/or examples of experience

XXIII. COOPERATIVE PROCUREMENT – LOCAL PUBLIC BODIES

This is a non-exclusive, partial list of public bodies that may be authorized to ride any contract resulting from this solicitation.

- A. If authorized by the bidder(s), resultant contract(s) will be extended to any or all of the listed members as designated by the bidder to purchase at contract prices in accordance with contract terms. The resultant contract may be offered by Bidder to other public bodies.
- B. Any public body utilizing such contract(s) will place its own order(s) directly with the successful contractor. There shall be no obligation on the part of any participating member to utilize the contract(s).
- C. A negative reply will not adversely affect consideration of your bid/proposal.
- D. It is the awarded vendor's responsibility to notify the members shown below of the availability of the Contract(s).
- E. Each participating jurisdiction has the option of executing a separate contract with the awardee. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.
- F. The issuing jurisdiction shall not be held liable for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the awardee.

BIDDER'S AUTHORIZATION TO EXTEND CONTRACT: You may select those public bodies that this contract may be extended to; A "blank" will signify a "NO" response:

	Alexandria Public Schools, VA		Madison County Public Schools, VA
	Alexandria Sanitation Authority		Manassas Park Public Schools, VA
	Alexandria, Virginia		Manassas Park, Virginia
	Arlington County, Virginia		Manassas, Virginia
	Arlington Public Schools, Virginia		Manassas City Public Schools, Virginia
	Bowie, Maryland		Maryland-National Capital Park & Planning Commission
	Charles County, Maryland		Metropolitan Washington Airports Authority
	Charles County Public Schools, MD		Metropolitan Washington Council of Governments
	Chevy Chase Village, MD		Montgomery Community College
	Clark County Administrative Services		Montgomery County, Maryland
	College Park, Maryland		Montgomery County Public Schools, MD
	Culpeper County, Virginia		Northern Virginia Community College
	Culpeper County Public Schools		Northern Virginia Regional Commission
	District of Columbia		Orange County Public Schools, Virginia
	District of Columbia Courts		Prince George's County, Maryland
	DC Water and Sewer Authority		Prince George's County Public Schools, MD
	District of Columbia Schools		Prince William County Public Schools, VA
	Fairfax County Water Authority		Prince William County, Virginia
	Fairfax, Virginia (City)		Prince William County Service Authority
	Falls Church City Public Schools		Rappahannock County Public Schools, VA
	Falls Church, Virginia		Rockville, Maryland
	Fauquier County, Virginia		Shenandoah County Public Schools, VA
	Fauquier County Schools, Virginia		Spotsylvania County Schools, Virginia
	Fauquier County Water & Sanitation Authority		Stafford County, Virginia
	Frederick City, Maryland		Stafford County Public Schools, Virginia
	Frederick County Maryland		Takoma Park, Maryland
	Frederick County Schools, Maryland		Vienna, Virginia
	Gaithersburg, Maryland		Upper Occoquan Sewage Authority
	Greenbelt, Maryland		Virginia Railway Express
	Herndon, Virginia		Washington Suburban Sanitary Commission
	Leesburg, Virginia		Washington Metropolitan Area Transit Authority
	Loudoun County Sanitation Authority		Winchester, Virginia
	Loudoun County, Public Schools, VA		Winchester Public Schools
	Loudoun County, Virginia		Others

Complete and return this form with your bid. Contract award may not be made without it.

Vendor Name